

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8443 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

ABDULLA NASHRULLA SHAIKH

Versus

GAMANLAL CHHAGANLAL PATEL

Appearance:

MR SN SHELAT for Petitioner
MR SH SANJANWALA for Respondent No. 1
MR SA DESAI for Respondent No. 6

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/02/99

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioner has challenged the judgment and order dated 28.10.1988 passed by the Gujarat Revenue Tribunal in revision application No. TEN.B.S. 68 of 1984 under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act").

2. In view of the order that the Court proposes to

pass in view of the affidavits dated 25.3.1998 filed by respondent No.1-Gamanlal Chhaganlal Patel and by Vilasbhai I. Panchal, Power of Attorney Holder of the heirs of deceased-respondent No.6-Ichharam C. Panchal, it is not necessary to state all the facts in detail. Suffice it to say that the dispute pertains to the land admeasuring 4 Gunthas with dwelling units thereon in Survey No. 185/1 of village Ponda, Dharampur, Valsad. Petitioner- Abdulla Shaikh claimed to be in possession of the aforesaid land as tenant-agriculturist. The proceedings under the Act were accordingly instituted. In the said proceedings respondent No. 2 to 5 stated that they had relinquished their interest in the land in favour of respondent No. 1-Gamanlal as the land was previously standing in the name of respondent No. 1 to 6. Respondent No. 6 purchased the land from the original owner. The disputed land thus belonged to respondent No. 1 and was purchased by respondent No. 6 as stated above. In the aforesaid proceedings, the Mamlatdar & ALT, Dharampur passed order dated 8.6.1983 declaring that the petitioner was entitled to purchase the land with the dwelling units under Section 17B of the Act. Aggrieved by the said order, respondent No. 1 preferred Tenancy Appeal before the Deputy Collector who by his order dated 16.3.1984 rejected the appeal and confirmed the order passed by the Mamlatdar & ALT. Aggrieved by the said order, respondent Nos. 1 and 6 preferred the above numbered revision application before the Tribunal. By its judgment and order dated 28.10.1988 the Tribunal allowed the revision application. It is against the aforesaid order that the present petition is filed.

3. During pendency of the petition, respondent No. 6-Ichharam Chhabildas Panchal died in the year 1995 and his heirs were brought on record.

4. When the matter is called out for hearing today, the learned counsel for the petitioner points out that as stated in the affidavit dated 25.3.1998 Gamanlal C Patel, respondent No. 1 herein and also in similar affidavit dated 25.3.1998 by Vilasbhai I. Panchal, Power of Attorney Holder of the heirs of deceased-respondent No.6, the matter is settled between the contesting parties and this Court is requested to set aside the judgment of the Tribunal and to restore the order of the Mamlatdar & ALT as confirmed by the Deputy Collector. It is stated at the bar that as far as respondent Nos. 2 to 5 are concerned, they had already stated before the Mamlatdar that the land in question admeasuring 4 Gunthas belonged to respondent No. 1 Gamanlal Patel and that respondent

Nos. 2 to 5 had no interest in the land and that the petitioner was in possession of the land on the specified date. It is further stated that respondent No. 1 had admitted possession of the petitioner prior to the specified date i.e. prior to 1973.

5. In view of the aforesaid affidavits filed by respondent No.1 and by the Power of Attorney Holder of respondent No. 6 and in view of the statement made by Mr SA Desai, learned counsel appearing for the heirs of deceased-respondent No. 6 who purchased the land from respondent No. 1 that the parties abide by the settlement as mentioned in the affidavits, the judgment and order dated 28.10.1988 passed by the Tribunal is set aside and the order passed by the Mamlatdar & ALT, Dharampur on 8.6.1983 in Tenancy Case No. 17/Appeal/8449 (Annexure "A") as confirmed by the order of the Deputy Collector, Valsad in Tenancy Appeal No. 300/83 (Annexure "B") is restored.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

February 15, 1999 (M.S. Shah, J.)